

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

2.4

25

26

27

28

1 prejudicial such that the prejudicial effect of the testimony would substantially outweigh any
2 possible probative value of the evidence thereby necessitating its exclusion under FRE 403,
3 Federal Rules of Evidence². “A ‘showing of substantial similarity is required when a plaintiff
4 attempts to introduce evidence of other accidents as direct proof of negligence, a design defect,
5 or notice of the defect.’” *White v. Ford Motor Co.*, 312 F.3d 998, 1009 (9th Cir. 2002), quoting
6 *Cooper v. Firestone Tire & Rubber Co.*, 945 F.3d 1103, 1105 (9th Cir. 1991).

7 Plaintiffs have disclosed witnesses to three other accidents, Nicole Walla, Jennifer
8 Danks, David Matthews, and Marisa Kluth each of whom are parents of children who were
9 strangled by mini-blinds that had pull cords in excess of 7-1/4 inches and did not have safety
10 devices.³ Plaintiffs have attached to their disclosure the Consumer Product Safety
11 Commission’s in-depth investigation (“IDI”) for each of the three accidents. In two of the
12 accidents which Plaintiffs intend to offer evidence, the mini-blinds at the time of injury had two
13 separate pull cords, each ending in a separate tassel. The cords in question formed a loop and
14 became tangled, thereafter resulting in the strangulation. Unlike the case before the Court, the
15 loops in the unrelated cases were not created because someone had deliberately joined the cords
16 in a single tassel to form a loop, instead they tangled together forming a loop. To admit
17 evidence that children can **also** accidentally strangle if pull cords **unintentionally** become
18 tangled may wrongly invite the jury to hold L&W liable on that basis regardless of the fact that
19 this did not occur in the matter at hand. Moreover, the Court finds that the jury could easily be
20 confused or misled into imposing liability on the mere basis of what *could* have happened rather
21 than what *did* happen.

22
23 ² "Although relevant, evidence may be excluded if its probative value is substantially
24 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury,
25 or by considerations of undue delay, waste of time, or needless presentation of cumulative
26 evidence." Federal Rules of Evidence Rule 403, 28 U.S.C.A.

27 ³ The mini-blinds in the present case had pull cords in excess of 7-1/4 inches and were
28 not manufactured or distributed with safety devices.

1 Evidence of the third accident of which Plaintiffs intend to offer evidence is the
2 Kluth accident. It also had two separate mini-blind pull cords each ending in a separate tassel.
3 The pull cord was knotted several times below the two separate tassels, however unlike the
4 present case in which Mr. Bauerlein denies joining the pull cords to form a loop, Ms. Kluth told
5 the CPSC investigator that she in fact "knotted the pull cord so that the blind would not extend
6 any further." The Kluth mini-blind was a pleated fabric mini-blind (Bali Neat Pleat) unlike the
7 one in this case, manufactured by a different manufacturer, and distributed by a different
8 distributor. Moreover, unlike the undisputed facts of this case, there was no warning label on
9 the bottom rail of the Kluth mini-blind. Whether or not the evidence related to this accident is
10 relevant is of significant importance. The blinds were not manufactured or distributed by the
11 Defendants in the case before the Court, the proximate causation issues are clearly
12 distinguishable, and overall, the Court does not find that the evidence has any tendency to make
13 the existence of any fact that is of consequence to the determination of the action more probable
14 or less probable than it would be without the evidence.⁴

15 Defendants have articulated numerous distinguishing factors between the case presently
16 before the Court and the accidents from which Plaintiff's seek to draw evidence. Therefore, the
17 Court finds that the accidents are not substantially similar enough to the facts and circumstances
18 of this case. Thus, the evidence will be excluded as inadmissible under Rule 403 as unfairly
19 prejudicial, confusing, and misleading.

20 Accordingly,

21 ...

22 ...

23 ...

24 ...

25 ...

26 ⁴"Relevant evidence" means evidence having any tendency to make the existence of any
27 fact that is of consequence to the determination of the action more probable or less probable
28 than it would be without the evidence." Federal Rules of Evidence Rule 401, 28 U.S.C.A.

1 **IT IS HEREBY ORDERED GRANTING** Defendants' Motion in Limine to Exclude
2 Evidence of Dissimilar Accidents. (Doc. 146).

3 DATED this 24th day of May, 2007.

4
5 
6 _____
7 Stephen M. McNamee
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28